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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re Jimmy Gene James, Jr. and Wanda Louise James, Debtors.	Case No. 04-60536-B-7 DC No. FF-7

MEMORANDUM DECISION REGARDING MOTION TO AVOID JUDICIAL LIEN OF TRUDY S. MOONEY

Gary Ray Fraley, Esq., of Fraley & Fraley, appeared for the debtors Jimmy Gene James, Jr. and Wanda Louise James (the "Debtors"). Debtors were also present.

Creditor Trudy S. Mooney appeared pro se (the "Creditor").

The motion to avoid judicial lien of Trudy S. Mooney (the "Motion") was argued before the undersigned on May 12, 2005. The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 11 U.S.C. § 522. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(O). For the reasons set forth below, the Motion is GRANTED.

On May 18, 1998, Creditor obtained a judgment in the Kern County Superior Court against debtor Jimmy James, Jr., in the amount of $612.32 plus post-judgment interest as allowed by law. The judgment was secured by an abstract of judgment recorded with the Kern County Recorder on November 13, 1998. The abstract of judgment constitutes a judicial lien against the Debtors' residence located at 7701 Florence Street, Lamont, California (the "Residence").

The Debtors move to avoid Creditor's judicial lien against the Residence pursuant to 11 U.S.C. § 522(f) which provides in pertinent part:

> [T]he debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled . . . if such lien is–
>
> (A) a judicial lien, ...

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Based on the record in this case, and the evidence before the court, it appears that (1) Creditor has a judicial lien against the Residence, and (2) that Creditor's judicial lien impairs the exemption which the Debtors were entitled to claim, and did claim, in the Residence. The undisputed declaration of Jimmy Gene James, Jr. states that the Residence had a fair market value, as of commencement of the case, of $141,000. The Residence is subject to a nonavoidable mortgage in the amount of $87,783.90 leaving an equity of approximately $53,216.10. The Debtors claimed an exemption of the equity under California Code of Civil Procedure 704.730(a)(2) of up to $75,000. No one objected to the exemption within the time to do so. Creditor's judicial lien reduces the equity to less than $52,603.78. By reducing the available exemption, Creditor's lien "impairs" the Debtors' exemption within the meaning of § 522 and the Debtors are entitled to an order removing the judicial lien from their Residence.

Creditor objects to the Motion on the grounds set forth in an unverified letter filed on March 10, 2005. Creditor argues that her judgment is based on a restitution award in a prior criminal proceeding. These allegations may give rise to a dischargeability issue, but that issue is not before the court. The court notes that the Debtors' discharge was entered without objection from any party, on April 14, 2005. Even if Creditor's claim had been, or is subsequently determined on proper grounds to be, nondischargeable in this bankruptcy, the Debtors would still be entitled to avoid the judicial lien to the extent it impairs the exemption in their Residence. *In re Vaughan*, 311 B.R. 573, 579 (10th Cir. BAP, 2004).

Based on the foregoing, the Debtors' Motion shall be GRANTED. The Debtors shall submit an appropriate order avoiding Creditor's judicial lien against their Residence only.

Dated: June 9, 2005

W. Richard Lee
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

Wanda James
7701 FLORENCE ST
LAMONT, CA 93241

Jimmy James
7701 FLORENCE ST
LAMONT, CA 93241

Gary Fraley
2862 Arden Way #205
Sacramento, CA 95825

Trudy Mooney
3102 La Entrada Ct
Bakersfield, CA 93306

Rossana Zubrzycki-Blanco
1331 L St
Bakersfield, CA 93301

Office of the US Trustee
1130 O St, Room 1110
Fresno, CA 93721

DATED: 6/10/05

By: _____
Deputy Clerk

EDC 3-070 (New 4/21/00)